

November 22, 2010

Marlene Dortch, Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, D.C. 20554

**Re: Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services, WT Docket No. 05-265; Notice of Ex Parte Communications**

Dear Ms. Dortch:

Pursuant to 47 C.F.R. Section 1.1206, I hereby submit a notification of an *ex parte* communication in the above referenced proceeding.

On November 19, 2010, Leo Cloutier, Senior Vice President, Strategy & Business Development, of Bright House Networks, and Cody Harrison, of Sabin, Bermant & Gould, LLP, Counsel to Bright House Networks, and the undersigned met with: Ruth Milkman, Chief, Wireless Telecommunications Bureau (WTB); Jim Schlichting, Senior Deputy Chief, WTB; Paul Murray, Assistant Bureau Chief, WTB; Tom Peters, Chief Engineer, WTB; and Patrick DeGraba, Chief Economist, WTB.

During the meeting, we discussed issues facing Bright House Networks as a potential entrant into the wireless marketplace, including the unwillingness of certain carriers to enter into data roaming agreements on reasonable and non-discriminatory bases. We emphasized the need for the Commission to create a backstop as to what "reasonable charges" under Section 151 of Title 47 requires. And, we proposed using retail yield as a possible test for the reasonableness of charges.

In addition, we discussed the FCC's statutory authority to implement wireless data roaming, under the "functional equivalence" test of Section 332. We noted that the 2007 *Roaming Order*, Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers, WT Docket No. 05-265, Report and Order and Further Notice of Proposed Rulemaking (2007), extended roaming to non-interconnected, functionally equivalent services offered by CMRS such as non-switched SMS and push-to-talk. From the customer's perspective, interconnected and non-interconnected texting are identical.

We also noted that under Section 332, the FCC has broad authority to define requirements of wireless providers; and that Section 316 grants the FCC authority to modify radio licenses, including those issued pursuant to Section 332.

The attached presentation summarizes the issues raised and was circulated at the meeting.

If there are questions regarding the foregoing or the attached, please contact the undersigned.

Very truly yours,

A handwritten signature in black ink, appearing to read "Dan Brenner", with a long horizontal flourish extending to the right.

Daniel L. Brenner

Partner

daniel.brenner@hoganlovells.com

D +1 202 637 5532

Enclosure

cc: Ruth Milkman  
Jim Schlichting  
Paul Murray  
Tom Peters  
Patrick DeGraba

Hogan  
Lovells

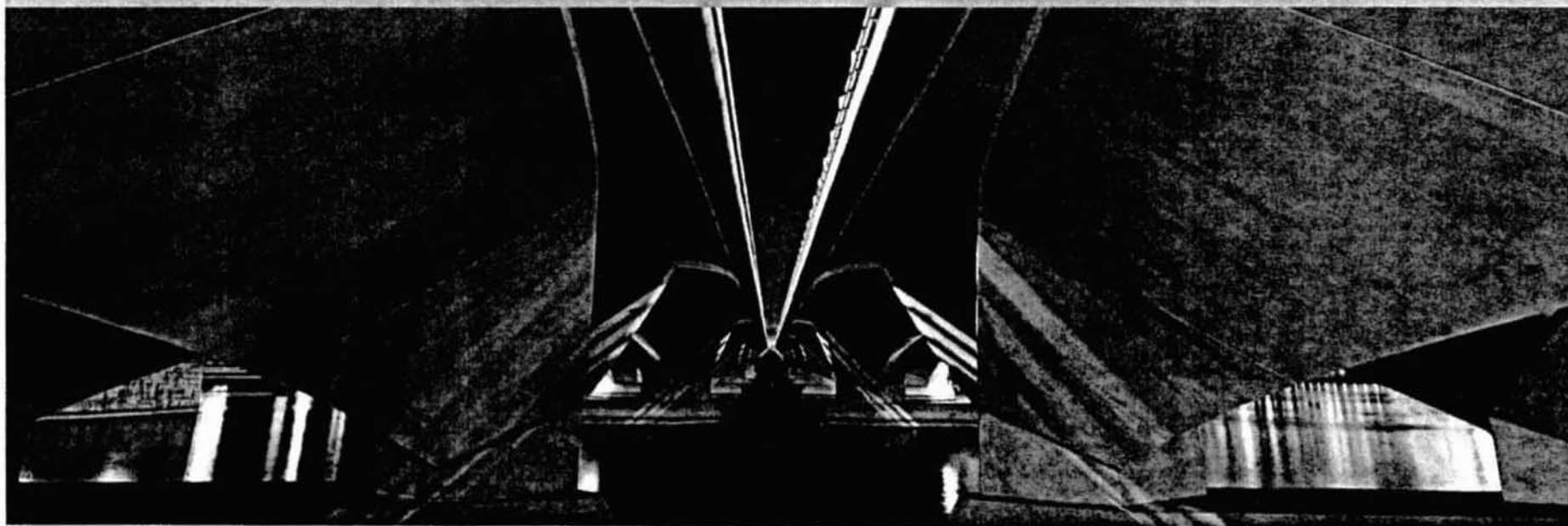
# BRIGHT HOUSE NETWORKS



## Roaming for Wireless Data Networks

Leo Cloutier, SVP, Cody Harrison, Counsel, Bright House Networks  
Daniel Brenner, HoganLovells

November 19, 2010, Wireless  
Telecommunications Bureau



# Bright House Networks (BHN) Is Premier Provider of Broadband Services

---



- 6<sup>th</sup> Largest cable MSO
- Full service provider in FL, AL, CA, IN, MI with 2.4 million customers
- Internet Access Service ranked highest in customer satisfaction (J.D. Power & Associates)
- Privately held, major contributor to economy in communities BHN serves

## BHN is Committed to a Wireless Strategy . . .

---

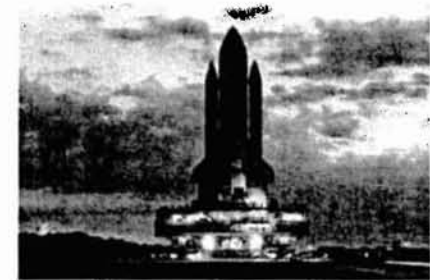
- BHN has spent hundreds of millions in wireless investments
- A part of Spectrum Co. \$2.4 billion bid in 2006 AWS auction
- Investor in Clearwire's advanced WiMax broadband network
- Participated in 700 MHz auction



## And BHN Has Tools to Enter the Market . . .

---

- Wireline plant gives us backhaul service
- We have experience selling both broadband service and voice service to customers
- We serve residential, commercial customers
- We have superior customer service platform
- Commitment to outstanding wireline broadband service and continuous upgrades



## And U.S. Wants/Needs New Service Entry. . .

- Broadband Plan/ President Obama: add 500 mhz of new spectrum
- FCC: trying to convert other occupied spectrum for broadband
- “Low hanging fruit” spectrum – entry by companies like BHN that are ready to offer wireless broadband
- Promote jobs, economic growth



## ... But BHN Can't Launch without Wireless Roaming on Feasible Terms

---

- Wireless data users expect ubiquitous coverage, just as they do for cell phone service
- Large wireless carriers have power, financial incentive to refuse commercially reasonable roaming agreements
- No data roaming = no entry





## Two Actions Needed

---

1. Establish data roaming as a service requirement for wireless broadband providers
2. Create a backstop definition for what “reasonable charges” (§ 151) constitute

- BHN proposed using “retail yield” as test of reasonableness of provider’s charges:

*Average revenue / Average usage for type of service*

*e.g., \$20/300 MB = \$0.0067/ MB*

Carrier of host system could report retail yield for mobile broadband quarterly to evaluate reasonableness of roaming rates in case of dispute

# Basis of FCC Authority to Implement Wireless Data Roaming

---

- Data roaming is wholesale provider-to-provider service
- Wholesale, retail services are interlinked; if carrier (i.e., BHN) can get wholesale roaming for its data services, customer can get data services at retail
- Data roaming services are “functional equivalent” of CMRS services under Section 332(d)
  - FCC has broad discretion to define “functional equivalence”
  - ≠ necessarily the same as Title II functional equivalence test

# Consumer: Voice, Data Service Have Identical Expectations, Are Substitutes

---

- Customers expect seamless connectivity for voice, data; impossible without roaming
  - Hot spots don't suffice to fill in the gaps
- Data is often a replacement for voice communications– email vs. phone call (“I’ll just email you”)
- CMRS voicemail increasingly looks like broadband email
- Voice growing as a wireless application of data networks (e.g., Skype, other over-the-top providers)

## Large Carriers In Principle Agree

---

- *“It makes little sense to define and investigate ‘voice’ and ‘data’ as separate markets.”*
  - ATT, WT Docket No. 09-66 (2009).

## 2007 Order Extended Roaming to Non-Interconnected, Functionally Equivalent Services Offered by CMRS

---

- In 2007 FCC extended roaming obligation to both switched and non-switched SMS, push-to-talk.
  - From customer's perspective, interconnected and non-interconnected texting are identical
  - While Order limited non-interconnected roaming obligation to data services from a CMRS provider, from customer's standpoint, this limitation is not material

## FCC Can Also Establish Data Roaming as a PMRS Service; or as an Obligation Under Section 316

---

- Under Section 332(a), FCC has broad authority to define requirements and “shall consider” effect of actions on competition
  - Data roaming is clearly pro-competitive
  - Access to facilities  $\neq$  common carrier requirements under Communication Act
    - See program access right of multichannel video programming distributor to vertically integrated programming under Sec.628; federal right of access to broadcast spectrum for federal candidates under Sec. 312(2)(7)
- Section 316 grants FCC authority to modify any radio license under Title III